IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6312 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADHUMAL GYANCHAND

Versus

COLLECTOR & SETTLEMENT COMMR

Appearance:

MR AH DESAI for Petitioner

MR VM PANCHOLI for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/04/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. This petition was admitted after notice to the respondents on 27th November, 1990 and interim relief which was granted earlier was ordered to be continued.

Interim relief was granted on 19th September, 1988 and the respondents were directed to maintain the status-quo with respect to the possession of the property in question.

3. The facts of the case, in brief, are that the petitioner has purchased the property EP No.370 in public auction in 1958 by offering a bid of Rs.13,550/- which was sanctioned by the Regional Settlement Commissioner. The petitioner produced the claims of himself, Shahebram Gyanchand and Hiranand Gyanchand for adjustment of the amount of purchase price of Rs.13,550/- for the property aforesaid. The petitioner and two of his other brothers are displaced persons as per their case. Several application were sent by the petitioner to the Regional Settlement Commissioner and the authorities concerned for adjustment of amount of Rs.13,550/- i.e. purchasing price of the property in question against the claims produced by the petitioner of himself and two others but the claim has not been settled and this amount has not been adjusted. On 1-3-1984, a notice came to be issued to the petitioner by Mamlatdar (E.P.), Junagadh informing to him for getting adjustment of the claims within 15 days otherwise the public auction of the property in dispute in favour of the petitioner would be rejected under Rule 90 (14) of the Displaced Persons (C & R) Rules, 1955. This notice was received by the petitioner on 4-3-1985 and it was properly replied by the petitioner. It is mentioned in the reply that it is the duty of the office concerned to get adjustment of claims from the Settlement Officer (P) Delhi. He further requested to do the needful for adjustment of claims as soon as possible. The petitioner made a very categoric and specific averment that the office of the respondent has requested the Settlement Officer, Government of India, Home Affairs, Rehabilitation (Settlement, Jesalmer House, New Delhi) vide his office letter No. EP-Junagadh-124 dated 27th January, 1986 and requested for settlement of the claims of the petitioner so that the auction price of the property in dispute may be adjusted against it. It is the grievance of the petitioner that the respondents without waiting for the reply from the office of the Settlement Officer, New Delhi under the order impugned in this special civil application has cancelled the public auction of the property in dispute. It is the grievance of the petitioner that the petitioner has also made it clear to the respondent that in case the claim is not adjusted he is ready and willing to pay Rs.13,550/- in cash. Even this aspect has not been considered before passing of the impugned order. Against this order, the petitioner

preferred a revision application to the Chief Settlement Commissioner, respondent No.2 herein, which also came to be rejected.

4. It is really shocking that the respondents No.1 and 2 though have been served long back with the notice of this special civil application, they have not cared to file reply to the special civil application, thereby, the averments made in this special civil application are to be accepted as correct. It is no more now in dispute that the claim has been filed by the petitioner but that has not been settled by the competent authority despite of submitting a detailed representation. The respondents themselves have requested the concerned authority for settlement of the claims of the petitioner and in this respect reference has been made by the petitioner to their letter dated 27th January, 1986. I find sufficient merits in the contention of the learned counsel for the petitioner that without waiting for the reply to the letter, the respondents have committed serious illegality in passing of the impugned order. Moreover, the petitioner has given out very specifically, as per his case, which is not controverted, that if the claim is not settled still he is ready and willing to pay the amount of Rs.13,550/- in cash. It is a matter where the amount of sale to be adjusted from the claim amount. If the claim amount is not finalised still the petitioner has given out his willingness to pay the amount of auction bid in cash. In view of this fact, which is not controverted by the respondents, the approach of both the authorities to cancel the auction is wholly arbitrary. At the most, the petitioner should have been asked to pay the amount of auction in cash. The petitioner is in possession of the disputed property since 1958 and this aspect has also not been taken into consideration. The whole approach of both the authorities in the facts of this case is wholly arbitrary and the orders impugned in this special civil application cannot be allowed to stand.

5. As a result of the aforesaid discussion, this special civil applications succeeds and both the impugned orders i.e. annexure `A' the order of the respondent No.1 and annexure `B' the order of the respondent No.2 are quashed and set aside. The petitioner is directed to deposit Rs.13,550/- in cash in the office of the respondent No.1 together with interest thereon at the rate of 6% p.a. from the date on which he was put in possession of the property in question till the date of payment, within a period of three months from the date of receipt of writ of this order. In case this amount is

not deposited by the petitioner as stated aforesaid within stipulated period then this special civil application shall stand dismissed automatically without reference to the court and the respondents are free to take back the possession of the disputed property from the petitioner along with the charges for use and occupation of the disputed property at the rate of Rs.50/-p.m. from the date when the petitioner was put in possession of the property. Rule is made absolute accordingly with no order as to costs.

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zgs/-